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February 18, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

RE: RIN 1245-AA08: Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies

Dear Secretary Scalia:

We write in support of the Department of Labor's (DOL) proposed rule to extend the reporting requirements of the *Labor-Management Reporting and Disclosure Act* (LMRDA) to intermediate bodies that are wholly comprised of public-sector labor organizations but are subordinate to national or international unions that represent private-sector employees and are thus already covered by the LMRDA. Intermediate state or regional labor organizations representing public employees often spend private-sector employee union dues that have been passed through the national or international union. Those private-sector employees, as well as the public employees within the structure of the intermediate body, deserve to see how unions are spending their hard-earned dollars.

LMRDA reporting requirements are paramount because private-sector employees in 23 states can be forced to pay a labor union as a condition of employment. The *Protecting the Right to Organize Act of 2019* (H.R. 2474), which recently passed the House of Representatives, would overturn all state right-to-work laws, imposing forced union dues on workers in all 50 states.¹ Prior to 2018, public employees in those 23 states could also be forced to pay a labor union as a condition of employment. The vast majority of states lack laws or regulations that require

¹ H.R. 2474, 116th Cong. (2019).

financial reporting and disclosure from state and local public-sector unions, so those workers are not able to see in detail how their union dues are spent.

Congress passed the LMRDA in 1959 with broad bipartisan support to create transparency and accountability within unions, following a Congressional investigation on rampant corruption at the highest ranks of organized labor. The need for accountability and transparency on behalf of union workers was so great that George Meany, President of the AFL-CIO, supported the bill.²

Unfortunately, the problem of corruption and wrongdoing by leaders of public- and private-sector unions has not subsided. The Committee report on the Senate bill that would eventually become the LMRDA, submitted by then-Senator John F. Kennedy (D-MA), made clear the case for reporting requirements to improve union financial integrity:

The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property... In addition, the exposure to public scrutiny of all vital information concerning the operation of trade unions will help deter repetition of the financial abuses disclosed by the McClellan committee.³

John F. Kennedy's words remain salient today. Under Secretary of Labor Elaine Chao, during the George W. Bush administration, DOL's Office of Labor-Management Standards (OLMS) pursued an aggressive agenda to update regulation and enforcement of the LMRDA.⁴ Among these updates was a 2003 rule stating that intermediate bodies subordinate to a national or international labor organization, which includes a union covered by the LMRDA, must also file the requisite forms required by the LMRDA, even if the intermediate body was made up of local unions representing public-sector employees only.⁵ Prior to this rule, intermediate bodies were subject to the LMRDA only if one or more of its local unions represented private-sector employees.

In 2006, the U.S. Court of Appeals for the D.C. Circuit remanded the rule to DOL to provide a "reasoned analysis" for the regulation,⁶ and the following year, DOL provided three rationales.⁷ First, the rule advanced Congress' intent with the LMRDA to benefit union members through public disclosure of union finances, and thus the definition of labor organizations should be interpreted broadly in order to maximize union democracy, transparency, and integrity. Second, the expanded coverage to additional intermediate bodies required reporting of financial transactions between structurally related labor organizations, enhancing workers' ability to trace the use of their own union dues.⁸ Finally, the rule focused specifically on intermediate bodies precisely because they are subordinate to an organization already covered by the LMRDA.⁹ The D.C. Circuit upheld DOL's position and the rule went into effect.

² *Joint Subcomm. on Lab.-Mgmt. Reform Legis. of the Comm. on Educ. & Lab.*, 86th Cong. 1477 (1959) (statement of George Meany).

³ S. REP. NO. 86-187, at 404-405 (1959).

⁴ See, e.g., OFF. OF LAB.-MGMT. STANDARDS, DOL, 2004 PROGRAM HIGHLIGHTS (Mar. 2005).

⁵ Labor Organization Annual Financial Reports, 68 Fed. Reg. 58,374 (Oct. 9, 2003).

⁶ *Ala. Educ. Ass'n v. Chao*, 455 F.3d 386 (D.C. Cir. 2006).

⁷ Labor Organization Annual Financial Reports, Forms LM-2, LM-3, LM-4, 72 Fed. Reg. 3735 (Jan. 26, 2007).

⁸ *Id.* at 3738.

⁹ *Id.* at 3739.

Unfortunately, at the behest of labor union leaders, the Obama administration rescinded the intermediate bodies regulation as well as several other changes made during the Bush administration that improved union democracy.¹⁰ Appropriately, DOL under your leadership has placed a renewed emphasis on serving the priorities of workers rather than union leaders, and in doing so has pursued a commendable transparency agenda at OLMS. Last year, we submitted comments in support of DOL's proposed rule to re-establish Form T-1, another union financial transparency regulation that was originally promulgated by the George W. Bush administration but rescinded by the Obama administration. In that letter, we stressed the need for increasing financial transparency within unions:

[I]nstances of fraud, embezzlement, and other forms of corruption are all too common among labor union leadership. Over the last 10 fiscal years, OLMS enforcement has resulted in over a thousand indictments and convictions.¹¹

In addition, DOL reported that 5.7 percent of all criminal cases involved intermediate bodies, and 13.8 percent of audits of intermediate bodies revealed evidence of criminal activity, requiring the opening of a criminal investigation.¹² The proposed rule to expand the coverage of intermediate bodies subject to the law's reporting requirements would shed greater light on the use of workers' union dues and potentially expose or prevent wrongdoing, and the justifications detailed in DOL's 2007 response to the D.C. Circuit remain true.

Moreover, as detailed in Section III of the preamble to this proposed rule, the need to expand the coverage of the LMRDA to intermediate bodies has grown with the increasing prevalence and power of public-sector unions. In *Janus v. American Federation of State, County, and Municipal Employees*, the Supreme Court affirmed that all public-sector union activity is inherently political because public-sector collective bargaining affects public policy issues.¹³ Thus, when a national or international labor organization subject to the LMRDA transfers the union dues of a private-sector employee to an intermediate body made up of public-sector unions, those dues are being used to advance a political agenda without the private-sector employees' knowledge or input. The private-sector employee has no way to know and no way to prevent his or her dues from being used to advocate for public policy positions with which he or she may disagree.

The Court previously ruled in *Communications Workers of America v. Beck* that employees must be free to opt out of union political spending.¹⁴ The status quo makes it extremely difficult for private-sector *Beck* objectors to ensure that their union is complying with that Court ruling. This is because the union is sending dues to a national or international organization, which then sends the dues back to an intermediate body made up of public-sector unions, which in turn disburses

¹⁰ Rescission of Form T-1, Trust Annual Report; Requiring Subsidiary Organization Reporting on the Form LM-2, Labor Organization Annual Report; Modifying Subsidiary Organization Reporting on the Form LM-3, Labor Organization Annual Report; LMRDA Coverage of Intermediate Labor Organizations, 75 Fed. Reg. 74946 (Dec. 1, 2010).

¹¹ Letter from Virginia Foxx, Ranking Member, Comm. on Educ. & Lab., & Tim Walberg, Ranking Member. Subcomm. on Health, Emp., Lab., & Pensions, to Patrick Pizzella, Acting Sec'y of Lab. (July 29, 2019).

¹² Labor Organization Annual Financial Reports: Coverage of Intermediate Bodies, 84 Fed. Reg. 68842 (Dec. 17, 2019).

¹³ 138 S. Ct. 2448, 2474-2477(2018).

¹⁴ 487 U.S. 735 (1988).

the funds among those public-sector unions to assist in collective bargaining negotiations that the Court affirmed in *Janus* are political by nature.

While the proposed rule does not change the process for opting out of union political spending or prevent private-sector union dues from funding public-sector union activity, it does provide workers more clarity by allowing them to see how the intermediate body is spending their dues. Such spending is not merely hypothetical. As set forth in the proposed rule, as much as \$2.8 million in private-sector union dues could be directed to intermediate bodies not currently covered under LMRDA reporting requirements, meaning tens of thousands of employees are not able to see where their hard-earned union dues are going.

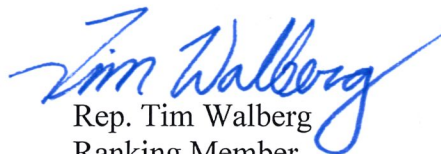
Improving the integrity of labor unions is particularly important in the public sector where unions have become powerful forces with significant impact on public policy and taxpayers. That is why we strongly support efforts to improve union transparency and accountability so well-documented fraud, embezzlement, and other forms of corruption in organized labor are stopped and workers are served better by unions. The proposed rule will help achieve these commonsense goals and benefit public-sector and private-sector workers and the American public.

We urge DOL to adopt the proposed rule in its current form expeditiously. Thank you for your consideration of these comments.

Respectfully submitted,



Rep. Virginia Foxx
Ranking Member



Rep. Tim Walberg
Ranking Member
Subcommittee on Health, Employment,
Labor, and Pensions